

179413 & 179414

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May 11, 2006

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VIA HAND DELIVERY

The Honorable Charles Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Intrastate Universal Service Fund Implementation Proceeding
Docket No.: 97-239-C

Dear Mr. Terreni:

Enclosed are the original and ten copies each of (1) Answer of Verizon Wireless to Petition of the Office of Regulatory Staff and (2) Motion to Summarily Grant a Portion ORS's Petition, both of which are submitted for filing on behalf of Cellco Partnership d/b/a Verizon Wireless in the above matter. I would appreciate your acknowledging receipt of these documents by date-stamping the extra copy of this letter enclosed and returning it to me via the courier.

By copy of this letter, I am serving all parties of record with a copy of the Answer and Motion and have enclosed a certificate of service to that effect. If you have any questions, or need additional information, please do not hesitate to contact me. With best regards, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.



Benjamin P. Mustian

BPM/amw

cc: parties of record

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 97-239-C

Re: Intrastate Universal Service Fund)
 Implementation Proceeding)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of each **(1) Answer of Verizon Wireless to Petition of the Office of Regulatory Staff and (2) Motion to Summarily Grant a Portion ORS's Petition** on behalf of Celco Partnership d/b/a Verizon Wireless by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

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Andrea M. Wright

Columbia, South Carolina
This 11th day of May, 2006

179414

Re:)
)
Intrastate Universal Service Fund)
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MOTION TO SUMMARILY
GRANT A PORTION OF
ORS'S PETITION

CELLCO Partnership, d/b/a Verizon Wireless (“Verizon Wireless”), an Intervenor and party of record in the above-captioned docket, hereby moves, pursuant to 26 S.C. Code Ann. Regs. R. 103-840 (1976), for summary disposition of a portion of the second issue set out in Paragraph 4 of the March 17, 2006, Petition (“Petition”) of the Office of Regulatory Staff (“ORS”) for an Order Clarifying Use Guidelines and Request for Expedited Relief. Specifically, with respect to the portion of the Petition which seeks “a declaratory ruling from the Commission that revenues from ...wireless services should not be included in the [Universal Service] Fund assessment based on current Commission directives”, Verizon Wireless requests that the Commission summarily grant the requested ruling. In support of its motion, Verizon Wireless would respectfully show as follows:

1. The Petition requests an order clarifying the Universal Service Fund (“USF”) Guidelines for South Carolina on an expedited basis. Pertinent to the instant motion, ORS is seeking clarification as to “whether under current Commission orders ... wireless services revenues should be included in the intrastate USF assessment” and seeks a declaratory ruling from the Commission that “revenues from ...wireless services should not be included in the Fund assessment based on current Commission directives.”

2. In Order No. 2001-419 dated June 6, 2001, in the instant docket, the Commission held that it was “adopt[ing] the recommendation made by Staff and Verizon Wireless that we exclude wireless revenues from the base of contributions to the State USF at this time.” *Id.* at 36. After explicating certain applicable provisions of S.C. Code Ann. §58-9-280, this Commission further stated “there had not been sufficient evidence presented in this proceeding that any wireless communications service provider competes with any local exchange service provider in South Carolina.” *Id.* (Emphasis supplied.) Thus, the Commission held that it was “in effect, ...granting Verizon [Wireless’s] Motion for a Directed Verdict as to the wireless portion of this case. *Id.* at 36-37. The Commission further stated, however, that it “reserve[d] the right to revisit this issue.” *Id.* at 37.¹ Consistent with the foregoing, the Commission’s Guidelines for the State USF adopted in this docket provide that “all telecommunications providers and other providers offering telecommunications services within the State of South Carolina must contribute to the USF”, but that the term “telecommunications providers” only includes wireless providers “where they compete with a local telecommunications service in this state.” See Order No. 2001-996, Exhibit “A”, pp. 3-4. Although other aspects of Order Nos. 2001-419 and 2001-996, and subsequent orders in this docket, have been subjected to appeal, Verizon Wireless submits that no party in this docket has appealed the portions of the order addressing the exclusion of wireless revenues from the State USF, the Commission has not “revisited” this issues, and that these portions of Order No. 2001-419 therefore constitute the law of the case. *Blakely v. State Bd. of Med. Examiners*, 310 S.C. 29, 425 S.E.2d 37 (1993) (holding that the failure to timely appeal an order of an administrative agency renders the order the law of the

¹ The Commission also found that any wireless provider which applied for status as a carrier of last resort (“COLR”) or an eligible telecommunications carrier (“ETC”) would, upon approval of such an application, be required to contribute to the State USF and then proceeded to state that wireless providers could be required to contribute to the USF “where they compete with a local telecommunications service in this state.” *Id.*

case.)

3. Similarly, the statutory provisions relied upon by the Commission as the basis for finding that wireless revenues are to be excluded from the SC USF have not changed since the issuance of Order No. 2001-419. S.C. Code Ann. Section 58-9-280(E)(2) (Supp. 2005) still provides that the Commission must adopt guidelines for the funding and management of the fund and “shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF.” Further, S.C. Code Ann. Section 58-9-10(15) (Supp. 2005) continues to specifically provide that ‘telecommunications services’ means “the services for the transmission of voice and data communications to the public for hire, including those nonwireline services provided in competition to landline services.” (Emphasis supplied.) S.C. Code Ann. Section 58-9-280(G)(1) (Supp. 2005), as it did when Order No. 2001-419 was issued, provides that “competition exists for a particular service if, for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, the service, its functional equivalent, or a substitute service is available from two or more providers.”

4. The pertinent statutory provisions and Commission Order Nos. 2001-419 and 2001-996 are clear and straightforward with regard to this issue. A wireless provider in general² is only required to contribute to the USF in the event that it, along with another provider, is shown by a provider of local telecommunications service to be competing by providing the functional equivalent to, or a substitute for, the local telecommunications service in an exchange, group of exchanges, or other clearly defined geographical area. Absent such a showing, the

²Verizon Wireless does not understand the Petition to address the circumstance where a wireless provider has been recognized by the Commission as a COLR or ETC. To the extent that the Petition is intended to do so, Verizon Wireless submits that that issue may be taken up in the dockets in which a wireless provider has been recognized as a COLR or ETC.

revenues of a wireless provider are excluded from the State USF.

5. Verizon Wireless appreciates ORS's need to be diligent in the enforcement of the Commission's orders in this proceeding in its role as the Administrator of the State USF. Verizon Wireless submits, however, that the exclusion of revenues generated by wireless telecommunications service providers from the State USF has been so clearly established that further hearings or other proceedings before the Commission on this issue are unnecessary and unwarranted. Accordingly, Verizon Wireless respectfully moves that the Commission summarily – *i.e.*, without further notice or action by the Commission – grant that portion of the Petition which seeks a declaratory ruling that wireless revenues are excluded from the SC USF on the basis of the settled law described hereinabove and that ORS be authorized to so instruct any person or entity which may be subject to the State USF.

WHEREFORE, having fully set forth its Motion, Verizon Wireless requests that the Commission issue an order consistent with the foregoing.

Respectfully Submitted,

WILLOUGHBY & HOEFER, P.A.

By: 

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This 11th day of May, 2006